



Austin City Council MINUTES

For EMERGENCY SPECIAL CALLED COUNCIL MEETING
JANUARY 16, 1985 - 4:00 P.M.

Council Chambers, 307 West Second Street, Austin, Texas

City Council

Frank C. Cooksey
Mayor

John Treviño, Jr.
Mayor Pro Tem

Council Members
Mark Rose
Smoot Carl-Mitchell
Sally Shipman
George Humphrey
Charles E. Urdy

Jorge Carrasco
City Manager

Elden Aldridge
City Clerk

Memorandum To:

Mayor Mullen called the meeting to order, noting the presence of all Councilmembers.

EXECUTIVE SESSION

Mayor Mullen announced that the City Council would go into a closed or executive session authorized by Article 6252-17, Texas Revised Civil Statutes Annotated, to discuss the following:

- a. Litigation - attempt to enjoin City Election; LULAC vs. City of Austin, Section 2, Paragraph e.

When the City Council resumed its public session, Mayor Mullen announced that the City Council had been in executive session to discuss litigation on annexation, but no action would be taken. Mayor Mullen then asked that the City Attorney to review some points that had been misinterpreted in an attempt to clarify clarify the situation.

City Attorney, Paul Isham, explained to the Council and the community the reasons why the United States Justice Department placed an injunction on residents living in recently annexed areas, which prohibits them from voting in the up-coming election.
(SEE ATTACHED TRANSCRIPT)

ADJOURNMENT

The Council adjourned at 6:57 p.m.

MAYOR MULLEN:Our City Attorney is going to review some of the points that I think..has been misinterpreted and misinformation and maybe we can help clear those points up. Mr. Isham?

PAUL ISHAM: Thank you, Mayor. As you have mentioned, there have been various reports in the media about our election that's scheduled for January 19th and..several lawsuits that have arisen as a result of that. There's concern about the submission..to the Department of Justice. I'd like..and some other concerns, I'd like to address those. First of all Texas is a state that is under the Voting Rights Act and as a result any change that affects voting in the City of Austin must be pre-cleared by the Department of Justice. Historically, this City has submitted those changes for pre-clearance at a time prior to an upcoming election. In..prior to the bond election in September of 84, we submitted a request for pre-clearance of approximately 24 annexations that occurred from the time period of October 1983 until September of 84. To this date the Department of Justice has not pre-cleared those annexations. Under the Voting Rights Act, the Department of Justice has 60 days from the receipt of the submission to interpose an objection to the changes and if they don't interpose an objection then it's deemed to be cleared by the Department of Justice but it does not prevent any private citizen from bringing a lawsuit challenging the change as they..a change that dilutes the minority vote in the community. There are methods by which the Department of Justice can extend the time period in which they may review the submission and interpose any objection. They can request additional information from the submitting body, in this case the City of Austin, and the 60 day time period will not start to run until they have received the information that they have requested. In addition, if it's..in their opinion the supplemental information that's been submitted to them as a result of a request, is not sufficient, the 60 day time period does not start to run until such time they feel that the supplemental information is ..sufficient. In the case of the submission in September, they, the Department of Justice sent us a letter requesting about 13 items of information. Some of the things that they requested from the City were a listing of all the owners of tracts of land in the annexed areas, as well as their day time phone number and addresses, a listing of the zoning on each of those tracts of land, a description of the use of that land as it existed today, or if it was vacant land, a description of any use that the land owners intended to put to that property, a description as to the density that may go on that vacant property, a description of the project itself, whether it was residential or multi-family. In reading through this request, it..you can ascertain very readily that the whole idea of this request was to delay that 60 day time period from starting because it's almost impossible, unless we interview each land owner for every tract of land, to supply that information, because the City is not privy to that information. We received that information before we made our second submission, and that is the one that pertains to the January 19th election. We already had that letter in the department..from the Department of Justice

and we felt that when we made our second submission that they would require from the City "like information" from the City. So we went about trying to compile as much of the information that we could on our second submission so that we could head off any request that might be forthcoming for additional information. I'd also like to explain to the Council the process that the City must go through and the information that must be supplied. Many people feel that since an annexation ordinance is passed that all we have to do is put it in an envelope and send it to the Department of Justice the next day and that will be a submission. That is not the fact. In addition to the annexation ordinance itself, we have to show to the Department of Justice what voting precinct that tract of land will be placed. We have to provide a map that shows that land as it relates to a voting precinct on a map. And some of this information is out of the control of the City. For example; in the cases of placing a tract of land in a voting precinct, that is a function for the County, and we have to rely on the county to try to provide that information to us as promptly as possible. After we have found out which voting precinct it's being placed by the county, then our Engineering Department prepares the necessary maps. In some instances we found that the voting precincts were not entirely contiguous. The election code requires that a voting precinct not be separated by some other voting precincts. So all the land within one voting precinct has to be contiguous and adjoining and in a couple of instances after it was placed in a voting precinct by the county, and then our Engineering Department went back to place that on a map, we found that there was a division of the voting precinct and we have had to go back to the county and have it reassessed and placed and moved into a different voting precinct. And these are some of the problems we were confronted with and some of the reasons why it took us from November 16th to the end of December to compile all this information, to have the maps prepared, to get it placed in the voting precincts by the county before we..and to get the information that we knew was forthcoming to submit a packet that..to the Department of Justice. It's probably about six inches thick. Personally, as a lawyer, I feel that in this situation.. I have gone to Washington and talked to the Department of Justice about expediting our submission because I think the law is clear that until areas are pre-cleared by the Department of Justice, that people who live in those areas can be prevented from voting in a Municipal Election. The Department of Justice is well aware of the lawsuits that were filed back in the late spring by NAACP and MALDEF. They are aware of the efforts to try to settle that case. They reviewed the recent annexations that took place in November. They calculated that that had approximately a 1% effect on the minority voting strength in the community and they were very concerned about that. And they told us that they did not intend to expedite our submission. I think that even had we mailed our submissions off on November 16th, if we could have been capable of compiling all the information and mailing it on November 16th, that we still would not have pre-clearance today. I think, and our outside counsel that's assisting us in this case is also of the opinion that the Department of Justice will string this out until after the election in January. I think it's important that the community understand this because there's been allegations that the City has intentionally delayed the submission, that..There's allegations that..the reason we did this was to prevent people from voting that reside in those areas and those accusations are

entirely false. I'd like to say that once the Council passed the annexations it was my department's responsibility to get that submission off to Washington. The Council had no control over that nor did they try to exercise any control over that. Nobody instructed me to delay the submission. I pushed my staff. I pushed the City Clerk. I pushed the county to try to get the information to us as quick as possible and even with all that pushing and constant haggling, it still took us that long to get the information to get it up to Washington. And certainly the Council was not involved in any decision to delay or to prevent a vote by the people. In fact, it's always been the position of the City that the people in these areas have the opportunity to vote in this election. However, we have also been struggling for many months with the single member district issue and..with the lawsuits that were already on file, it was no secret to me that..that the plaintiff's and the MALDEF and NAACP suit were going to attempt to prevent the people from voting if at all possible. And..that is what brought us to the..and they wanted the City, and I think this is important, they wanted the City to voluntarily prevent those people from voting in the election and I, as the attorney for the City, told them that decision wasn't going to be made by the City and that ultimately led to the lawsuit that was filed Friday by LULAC as well as other plaintiff's, Black citizen plaintiffs and Hispanic citizen plaintiffs that are also involved in the earlier MALDEF and NAACP suit to enjoin the election..enjoin the people that live in the annexed areas from voting in the upcoming election. And that was what led us to the vote..to the court hearing that occurred on Monday before Judge Nowlin, the United States Federal Judge. There's also been a lot of publicity that the City agreed to the restraining order that was entered by Judge Nowlin on Monday. And, I think the community needs to know the context in which that occurred and how that actually happened. We, the lawyers, were summoned to the judges office at about 2:00 on Monday, to discuss the restraining order. As is customary in federal courts, outside of the courtroom itself, you quite often deal with the judges law clerk. Law clerks in federal court are licensed attorneys that are selected by the judges, it's usually an honor to be selected as a law clerk and you serve an approximately two year internship, or clerkship with a federal judge. It's not an administrative post. It's a professional post and as I say, these people are lawyers. We met with the judge's law clerk at 2:00 and the law clerk informed all parties that he had read the pleadings of the plaintiff, both he and the judge had researched the issue and that they were of the opinion that the plaintiff's allegations were correct and that the restraining order should be granted, that the law was clear that where you have a jurisdiction under the Voting Rights Act and there has not been pre-clearance by the Department of Justice that the voters in those areas can be precluded from voting in an election until there has been a pre-clearance. We have read those cases and we don't disagree with the holdings in those cases. So early on in the meeting, it was made known to us that there would be a restraining order granted by the judge. We had a discussion as to the earlier annexations, that is the ones that had occurred between October of 83 and September of 84 and whether those people should also be excluded from the election. We

maintained to the court that they had already voted in the bond election. There was also a legal dispute whether 60 days had passed and the court ..and the Department of Justice had not opposed the annexations and therefore maybe they had been approved through laches. Essentially what happened was that MALDEF and the attorneys for LULAC and the plaintiffs agreed to let those people go ahead and vote. I think they did that because we are talking, probably, about 2,000 voters in those particular annexations, as opposed to 15,000 voters that are involved in the annexations that have occurred since September of 84. After that issue was resolved, the bulk of the time spent in the Judge's chambers was devoted to how mechanically the City could allow the people in these areas to vote on the Capital Metro issue but prevent them from voting on the City propositions. City Clerk was brought in to give us his advice and opinion as to how this can be handled. A solution was proposed that all parties thought would be..would work and the Judge was notified and we then went into the actual courtroom to appear before the Judge and for him to consider the matter. When the Judge came on the bench, he made the statement that he thought the law was clear and that these people who live in the annexed areas are not entitled to vote because they haven't been pre-cleared. He then said, "I understand that the parties have reached an agreement as to how this can be accomplished", and I as the lawyer for the City and Mr. Van Os, who was there on behalf of the plaintiffs got up and said, "Yes, Judge, we have reached an agreement". The agreement, essentially, was how we were going to handle this mechanically. There wasn't an agreement that the people would be allowed to vote, or not be allowed to vote until we already knew what the Judges opinion and probable decision was on that matter. The basic agreement was how we were going to handle that mechanically. It's been reported that the agreement was such that the parties had agreed in advance and then went over and essentially presented an entire agreement to the court and that, in fact, did not occur. And I think that needs to be pointed out to the public. After Monday's affair, Terry Davis, who represents a resident within one of the areas in question, contacted my office yesterday and said he was going to file a lawsuit on behalf of that resident and maybe some others, to seek an injunction of the upcoming election. He filed that suit this morning in state court. He..we had a hearing before Judge Hart, who had agreed to hear it at noon today. Judge Hart heard the arguments from the attorneys and then he said he was in the midst of a trial and it would be later today that he would rule on the particular matter. I've just been passed a note that Judge Hart has denied an application to enjoin the election, that he has held that he has no jurisdiction to enjoin the election on January 19th and that therefore, it appears, at this point at least, that there will be an election on January 19th. I think..one thing I heard on one radio station, which I think is leading to the confusion in the community is a news broadcast that the City Council agreed on Monday to prohibit the people that live in these annexed areas, from voting in this election on January 19th. That's entirely false. There was no City Council Meeting Monday. The City Council has not entered into any agreement or a vote to prevent these people from voting. And

they would vote if it not be for the fact that there's a federal court injunction that prohibits those people that live in those annexed areas that have been annexed from September 13th, from voting on January 19th. I think..that..basically that's the scénario that's happened over the last 4 or 5 days. I know it's been very confusing. I personally feel that if..it's a shame that those people will not be able to vote on the City propositions that live in those areas. I think though that Judge Nowlin is right and the law says that they can't vote because of the pre..lack of the pre-clearance. I think that Judge Hart is right in failing..in ruling that he does not have the power to enjoin this election. I..there's also implications that it's just a ministerial matter for the Department of Justice to pre-clear changes in voting..that affect/voting in the community. The Voting Rights Act was passed to solve and address problems that existed throughout the country concerning the right of minorities to vote in respective jurisdictions. And the Department of Justice was charged with the responsibility to try to protect those rights. ..It is not a routine matter for them simply to receive a packet from a jurisdiction such as Austin and rubber stamp a clearance. They do review it. They make their own determination as to whether there's an impact on the minority vote in the community. From my conversations as well as my meetings with the Department of Justice, I think they are very concerned about these annexations in Austin, and what that can do to the minority voters in our City and I think they are going to use all the time that they can get to review it and that they would delay actually pre-clearing those. I think they are sitting back and waiting to see what the response of the community is in the upcoming election with regards to single-member districts. From the legal standpoint, I think that if single-member districts pass in this community that the Justice Department..the lawsuits will be brought to conclusions rather quickly and I think the Department of Justice will pre-clear the annexations so that these people can vote in future elections. If single-member districts don't pass, I think we are in for some tough months ahead with lots of litigation, possible appeals, possibility of not having a Council election in April, and we could go on for many months and....for a year or two. New Orleans went 9 years without a municipal election over a voting rights issue. Richmond went about seven years. The City of Lockhart went almost 6 years without a municipal election and these are some of the things that we possibly will be confronted with. But I wanted to make those things clear to the community and I thank you for the opportunity for letting me make that statement.

MAYOR:

That's all clear.